Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Linda Marie Sacks,

Petitioner,

v.

David Michael Sacks.,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of Florida,
for the Fifth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution permit a court to deprive a parent of physical custody and the right to care and nurture their children without a finding of unfitness by clear and convincing evidence.

2) Whether the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution permit a parent to be deprived of physical custody of their children if they are a victim of domestic violence and their children disclosed sexual and/or physical abuse, and that "Protective Parent" took reasonable action to protect the child(ren) from the offending parent named by the child(ren).

3) Whether the First, Fifth, Ninth, and Fourteenth Amendments of the constitution permit children to be placed in the physical custody of an abusive parent citing it's in the "Best Interest of The Child".

PARTIES TO THE PROCEEDING BELOW

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding is as follows:

The Petitioner is Linda Marie Sacks, Mother, Pro Se, individually, and on behalf of R.M.S. and S.R.S., natural born, minor children of the parties, and uses only their initials in this petition.

The Respondent, is David Michael Sacks, Father.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Linda Marie Sacks respectfully petitions for a writ of certiorari to review the judgment of the Fifth District Court of Appeals.

OPINIONS BELOW

The PCA, per curium affirmed by the Fifth District Court of Appeals is unpublished, as there is no written opinion.

JURISDICTION

The Fifth District Court of Appeals issued its PCA, per curium affirmed decision on 12/07/10. (App. A). Petitioner filed a timely Motion for Rehearing En banc, Motion for Certification, and Motion for Written Opinion and Clarification on 12/21/10. On 02/07/11, The Fifth District Court of Appeals issued an Order denying all of the above mentioned Motions. (App. B). This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

Because this petition challenges the constitutionality of a Florida Statute affecting the public interest, the terms of 28 U.S.C. § 2403(b) may apply and this petition is therefore being served on the Attorney General of Florida as required by Rule 29.4(c) of this Court.

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

The Fourteenth Amendment to the United States provides in relevant part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person

within its jurisdiction the equal protection of the laws".....

The Ninth Amendment in relevant part "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".....

The Fifth Amendment in relevant part "nor be deprived of life, liberty, or property without due process of law".....

The First Amendment in relevant part "Congress shall make no law...abridging the freedom of speech, or of the press; or the right of people to peaceably assemble, and to petition the government for a redress of grievances".....

FLORIDA STATUTES 61.13 "Best Interests of the Children".

STATEMENT OF THE CASE

Petitioner, a fit Mother to R.M.S. and S.R.S. filed for dissolution of marriage on 01/26/04 in her effort's to protect her children from documented sexual and physical abuse to them by the Respondent, their Father, and in doing so, lost physical custody of the minor children on 04/16/07, and was placed on Supervised Visitation.

Mother appealed the ruling of Judge Shawn L. Briese and on 08/08 the Fifth District Court of Appeals REVERSED and REMANDED the issue of child custody back to the trial court for a new hearing, due to the Petitioner's constitutional right to due process being violated. This rare reversal

provided no relief to Mother to be reunited with her children.

The trial court of Judge Shawn L. Briese refused to vacate the supervised visitation order after the Mandate from the Fifth District Court of Appeals, even though all of the supervised visitation reports from the Family Tree House Visitation Center were perfect and reflected a loving caring bond between Mother and her minor children.

Judge Briese insisted on hearing the "Retrial of Custody of Children" and refused legally sufficient Motions to be disqualified.

A "Retrial of Custody" was held 04/09. Judge Briese issued his oral ruling 06/09 on the "Retrial of the Custody of Minor Children" and he insisted that Mother must continue to be on supervised visitation because she did not buy greeting cards for the children to give to the father, (App. C) and that Mother did a TV interview at the Battered Mothers Custody Conference in Albany, New York in 01/09 about the family court crisis "and this could be detrimental to the children".

The trial court had NO evidence that Mother was ever a threat to her children, and there was ample evidence that Mother is a loving, caring Mother, class Mom, soccer Mom, community volunteer, car pool Mom, truly the all American Mom.

Mother is the longest family law referral case at The Family Tree House Visitation Center, and has only had 82 hours of contact in 4yrs and 1 month, the 2nd and 4th Saturday of the month for 1 hour.

1. Linda Marie Sacks married David Michael Sacks on June 12, 1993. Two children were born of the marriage R.S (born in 1994) and S.S. (born in 1996)

2. In April 2002, Mother received a phone call from Malka Altman, Preschool administrator of Temple Beth El, her daughter's private school, and was told that day that her daughter R.S. who was in kindergarten, had sexual knowledge beyond her years, was masturbating on the playground and in class, and was exhibiting sexualized behavior. More reports by school officials followed. These included: disclosures of sexual abuse made by the minor child to school teachers and the Mother of a teacher who heard, R.S. at 7 years old telling a little boy at Sunday school class "I suck my Daddy's penis", (App. F) and school officials who documented R.S. simulating oral sex with her Barbie Doll and a little boys penis area at car pool, and acting out at school. T.B.E. never called the child abuse hotline.

3. Mother sought help and the children's therapist, Diane Zedwig's summary that documented erotized behavior by both children, individually and in session together. Examples of this type of behavior included pulling each other's pants down, touching each other's nipples, arranging Barbie Dolls in suggestive sexual positions, and arranging anatomical dolls in also in suggestive positions, as well as drawing by R.S. that often indicated anger at her father.(App.G) and a drawing by R.S. that was sexual in nature. (At 8 she drew her father as an erect penis on legs. (App. H). This witness was never allowed to testify

as Father's attorneys got a protective order on her testimony. (App. I)

4. Mother witnessed numerous inappropriate behavior by the Respondent, Father, to the minor children and all are documented in the Injunction of Protection Case, (the Injunction of Protection was denied by Judge Briese) as well as the Dissolution of Marriage Case, and the two Court of Appeals cases.

5. During the Dissolution of Marriage case, and the Injunction of Protection case, the court appointed custody evaluator, Dr. Deborah O. Day told the court that R.S. had pediatric bipolar and that "negates any child sexual abuse". She dismissed all of the documented evidence of abuse, and then thwarted the investigation by the police department and the Dept. of Children and Families. (App. J)

6. R.S. has never had pediatric bipolar and Judge Briese was aware of this evidence but dismissed, ignored and suppressed credible evidence of child physical and sexual abuse and called R.S a "liar".

7. Through the failure of the family court to protect R.S. and S.S. from abuse, on April 3, 2007, the Father got Sole Physical Custody of the minor children, and Mother was Court Ordered to vacate the family home in 2 weeks. During this time the court allowed her to continue in her role as the children's primary caregiver and class Mom, but this all ceased when she abided by the court order to leave her children, April 16, 2007 and start the Supervised Visitation.

8. Mother was placed on Supervised Visitation at the Family Tree House Visitation Center with her contact limited to two hours a month.

9. On May 18, 2007, Justice for Children, a national organization that advocates for abused children when official avenues, judges, police, DCF have failed to protect them, wrote a letter to the Dept. of Children and Families Administrator, Reggie Williams, expressing their concern for the safety and well being of the minor children. It stated that "we have reviewed information regarding allegations of sexual and physical abuse of the children by their father. We are concerned that the evidence collected was never properly investigated by your agency. The information we have reviewed raises many concerns for the children's safety". (App. M).

Judge Briese had this letter as it was in the court records.

10. Mother appealed the ruling and in 08/08 the ruling on custody was REVERSED AND REMANDED due to Mother's constitutional rights to due process being violated. The rare reversal provided no relief, as the trial court of Judge Shawn L. Briese refused to vacate the Supervised Visitation Order, and he refused legally sufficient Motion's to be Disqualified, or allow any contact between Mother and her children unless supervised.

11. Mother filed a Writ of Prohibition (Case 5D08-3668) on 09/08 and asked the Fifth District Court of Appeals to prohibit Judge Briese from acting any further in the case and provided

documented evidence of judicial misconduct which included; documented evidence of ex-parte communication with the Respondents Attorney's James L. Rose and Leonard R. Ross, and violation of Judges Canon # 3, violations of FL. AD Code 2.330., as well as the violations of Petitioners due process rights which resulted in her losing custody of her children.

12. The Fifth District Court of Appeals denied the Writ and allowed Judge Briese to continue with the case. Without a hearing being called by either party, Judge Briese set the matter on his docket, and all of Petitioner's Motions to have a new Judge appointed were denied.

13. In the "Retrial of Custody" in 04/09 Judge Briese heard the father admit to documented evidence of child physical and sexual abuse to the minor children as he testified (on transcript) that he admitted to wiping down the vaginas of his "school age children", and admitted to the altercation in the kitchen of the family home in 02/04 with R.S. and she got a split lip and blood, as well as father's admissions that he verbally abused the Mother in front of the children. These statements by the Father matched the police reports and the Dept. of Children and Families hotline calls made by professionals in the case, and Mothers Injunction of Protection request.

Father testified during the "Retrial of Custody of Minor Children", in 04/09 that that Mother did not buy greeting cards for the children to give to him, and the Mother did a Channel 9 News

Interview in Albany New York about being on Supervised Visitation. (App. N.) News Interview

In the "Retrial" Judge Briese knew all of the reports from the Family .Tree House were perfect and reflected a loving, caring bond between Mother and children.

The respondent's attorneys of record for the Retrial, Mr. Ross and Mr. Rose never called any witnesses, never deposed any witnesses, never presented a case, and never presented any evidence that Mother was a threat to her children, yet they asked the trial court of Judge Shawn L. Briese to continue to keep Mother on Supervised Visitation.

In Judge Briese's oral ruling on the "Retrial of Custody" on June 26, 2009, stated (on transcript), in referring to the Father, said "He testified that nothing ever inappropriate never happened, sexually or physically, and the Court finds this to be the case, as it did the first time".

> Judge Briese stated, regarding Mother, "she's made no attempt to get Birthday, Fathers Day cards, Christmas cards or Hanukah cards for the father so the children can give those to the father. And that goes to Factor A, and it goes to Factor J. This is not a willingness to provide on the Mom's behalf to encourage a close, continuing parent/child relationship with the child with the other parent. It's completely opposite."

Judge Briese said "Dr. Day's finding that R.S. has a low probability of actually being abused and R.S. propensity to lie appears to be related to her mental health than abuse" (App M). On the next page of the transcript Judge Briese says R.S. was not bipolar. (App. N).

Judge Briese in his oral ruling in regards to Mother doing a Channel 9 News Interview in New York, expressed a concern that the minor children will discover these internet postings which would be detrimental to the minor children.

There was NO evidence that this was or would be detrimental to the minor children.

14. Without any finding of unfitness by clear and convincing evidence, nor any conduct by the Mother that was harmful to the children, the trial court of Judge Shawn L. Briese, on 06/26/09 insisted that Mother must continue to have her contact with her children supervised. In his oral ruling he stated: "Should the wife stop her destructive behavior toward the minor children and the situation settles down, the Court will entertain a post-dissolution petition to allow unsupervised visitation". All of the reports were PERFECT from the Visitation Center, but Mothers, parent-child relationship was denied once again.

15. The trial court has never provided a case plan or reunification plan.

16. On 10/15/09 Mother filed a timely pro se appeal to the Fifth District Court of Appeal. The ruling was affirmed on 12/07/10. The Motion for Rehearing En banc was denied on 02/07/11,and this

ruling by the Fifth District Court of Appeals, denies Mother's fundamental right to parent and care for her children. Mothers contact at the Supervised Visitation Center has only amounted to 82 hours of contact in 4years and 1month, and all of her requests to be re-united with her natural born children have been denied.

17. This timely petition for certiorari has followed.

18. "Protective Parents" all over America are losing custody of their children, and having their parental rights terminated or are placed on Supervised Visitation, without a finding of unfitness, by clear and convincing evidence. The latest research the ABA American Bar Association states that parents whose children disclose sexual and /or physical abuse will lose custody in 70% of the challenged cases. (x)

19. This is a national crisis for children who are victims of child sexual and/ or physical abuse and whose Mothers are victims of Domestic Violence in the United States of America.

20. If the constitution equal protection of fit parents can be so cavalierly discarded with the mere invocation of the term "Best Interests of The Children" then this crisis for Battered Mothers and their children is an issue that needs to be addressed by the highest court.

MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED

Petitioner, in the Amended Brief of Appellant, Reply Brief of Appellant, Motion for Rehearing En banc, Motion for Clarification and Written Opinion, and her Motion for Certification cite numerous references to the Constitution and parent's rights.

One example is that "the issue of a parent to the care and nurturing of her children is a fundamental right protected by the Constitution of the United States First, Fifth, Ninth and Fourteenth Amendments".

Another example is "no bond is more precious than the bond between parent and child and a parent's right to the care and custody of her children is an element of liberty guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution". In the Reply Brief of Appellant, the entire text of the Constitution of the United States and Amendments were included as Exhibit B.

The portions of the record are voluminous, and therefore are included in the Appendix. The Fifth District Court of Appeals, rejected this argument on the merits and issued a PCA, per curium affirmed. Thus, the claims were properly presented and are appropriate for this Court's consideration.

REASONS FOR GRANTING THE WRIT

This case perfectly fits the criteria for this Court's review. The lower court ruling and the PCA

affirmed ruling by the Fifth District Court of Appeals conflicts with other Court of Appeals and infringes on the constitutional right of a fit parent to custody of their children and addresses this national crisis of battered women who are losing physical custody of their children.

The children are being court ordered to live with the offending parent, with documented evidence of child physical and/or sexual abuse, and with whom the child identified as the perpetrator. The fact that this case is an opportunity to thoroughly explore domestic violence, battered mothers, child sexual and physical abuse and the family courts failure to protect America's children is a national concern for advocacy groups as well as governmental agencies.

Review is also warranted because The Office of Violence Against Women and The Dept. of Justice, as well as other national organizations are addressing this crisis, so this case and this issue is of great national importance.

Catherine Pierce 06/08, then Acting Director/ Violence Against Women, US DOJ, addressed the US Senate Committee on the Judiciary. It was "The Importance of the Violence against Women Act" and she said "the complicated issue of child custody presents another challenge involving the intersection of children and domestic violence. Battered women losing custody of their children is a serious and growing problem".

In August 2008, OVW, convened a Roundtable Discussion on Custody and Domestic Violence with experts and practitioners to inform OVW about how

battered women are losing custody of their children to either the perpetrators (through Family Court) or to the State (through Child Protective Services). As a result of the Roundtable discussion there will be increased public awareness about how children are being placed in the custody of batterers and how it is affecting those children. (xiii)

This case is also disturbing proof of how a custody and visitation judgment by the lower court and affirmed by the Fifth District Court of Appeals violated Mother's and her children's liberty interest and equal protection under the law, which is happening all over the U.S. and being addressed by national advocacy groups.

When there is a custom or policy of treating victims of domestic violence differently that constitutes gender bias discrimination. A Mother and her children must be treated equally under the First, Fifth, Ninth and Fourteenth Amendment. There is no reason to excuse the judiciary participating in depriving the parents of the care and custody of their children. Fundamental liberty interests involves retaining custody of one's own children, and the interests of one's own family is of the greatest importance.

To justify a loss of parental rights, the evidence MUST show abandonment, abuse, or neglect by clear and convincing evidence in order to terminate parents rights, or place that parent under court ordered supervised visitation. The evidence must show that the parent abused, neglected, or abandoned the child, or the child is at substantial risk of further abuse, neglect or abandonment.

The Petitioner, Linda Marie Sacks is a model parent. This Mother was the primary caregiver, class mom, soccer mom, community volunteer, and the court record shows she is a "squeaky clean" Mother.

The Fifth District Court of Appeals in affirming the erroneous judgment that gave the father sole physical custody and Mother supervised visitation once again, deserves the scrutiny of a review by this Court, as it is a clear violation of a parents right to raise and nurture their children, and Mothers rights were violated once again.

Parental rights of all fit parents to be with their children and to be free from sexual or physical abuse involves a fundamental liberty interest protected by the Constitution.

Only this court can resolve this conflict which is equal protection under the law for all fit parents and Mothers and children who are victims of abuse, and is rooted in this Court's decisions on the importance of a parent's liberty protected constitutional right to be a parent to their children.

Review is also warranted because this case is of national importance to Petitioner's children and all of America's children involved in child custody visitation scandal cases. This case is already a national case and it is typical of the national crisis and the statistical evidence revealing the blatant disregard of the documented evidence of abuse in the decision of custody. This strongly suggests total disregard for the victims of Domestic Violence including both Mother and children, which is a Human Rights Violations and should be protected

under the First, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States of America.

Finally this case is the ideal vehicle in which to resolve these questions, because the parties have a pristine case with an extensive record, including all of the transcripts from the beginning in 2004.

This case is typical of cases all over the United States, which fit, safe, protective parents are losing custody and the parent with documented evidence of child sexual and /or physical abuse is given Sole Physical Custody with great safety concerns for the well being and safety of the minor children placed in their care.

These rulings by the trial court and the Fifth District Court of Appeals challenge the constitutional rights of a fit parent to the care, custody and nurture of their children, as well as the "best interest of the children" standard for child custody decisions which involves domestic violence, child sexual and /or physical abuse.

Certiorari accordingly should be granted.

I. The Ruling By The Fifth District Court of Appeals Conflicts With This Courts First, Fifth, Ninth and Fourteenth Amendments On a Fit Parents Equal Protection and Liberty Right To The Custody, Care, Companionship and Nurture Of Their Children, Without Findings of Unfitness by Clear and Convincing Evidence.

This Court has repeatedly affirmed that a parent's right to a relationship with their children is among the most fundamental liberties protected

by the Constitution of The United States of America.

The constitutional protection of a right to parent children is a fundamental right and upheld in the recent decision in *Troxel v. Granville*, 30 U.S. 57, (2000), as this Court stated:

> The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control."...We explained in Pierce that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right coupled with the high duty, to recognize and prepare him for additional obligations. Id at 535. We returned to the subject in *Prince v. Massachusetts,* 321 U.S.

> 158, (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first within the parents, whose primary function and freedom include preparations for obligations the state can neither supply or hinder". Id., at 166

Accordingly, this Court has held that no State may deprive a parent of parental rights without a finding of by clear and convincing evidence that parent is unfit. *Santosky v. Kramer*, U.S. 745, 769-770 (1982).

Here, no Court has made the required findings of fact and conclusions by law, applying the clear and convincing evidence standard, to show that a deprivation has occurred and that termination of parental rights is warranted. No Court has found the Petitioner, Linda Marie Sacks to be an unfit parent.

Notwithstanding the absence of such findings she was court ordered, not once but twice by the trial court and affirmed the second time by the Fifth District Court of Appeals, that her contact with her children must be supervised.

The judicial determination in child custody rulings has such a significance, the severance of a parent-child relationship must be exercised cautiously and scrutinized.

This constitutional right of a parent-child relationship should only be infringed upon only under the most compelling circumstances. Based upon this liberty interest, for example, this Court has concluded that parents have the right to establish a home, direct the upbringing of their children, and control their children's education, and the state may not sever the rights of their natural born children, in a court proceeding, unless it proves by clear and convincing evidence that the parent is unfit to raise their children.

Judge Shawn L. Briese in his Oral ruling stated, Mother, while she was under supervised visitation for 2 years, she did not by greeting cards for the children to give to the father and that she did a TV interview in New York at a Battered Mothers conference. The interview is protected by the 1st Amendment, Freedom of Speech.

The Petitioner is a model parent and to keep her on Supervised Visitation, seeing her daughters at the Family Visitation Center for 1 hour, the 2nd and 4th Saturday of the month, violated her constitutional rights, once again.

In *May v. Anderson*, 345 U.S. 528; 73 S.Ct.840, 843, (1952) this Court noted that a parent's right to "the companionship, care custody and management of his or her children" is an interest "far more precious" than any property rights. Rights of parents historically have been addressed by the US Supreme Court and protected by the Constitution. As noted in *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) the US Supreme Court stated that:

> "the parent–child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility.

Linda Marie Sacks rights to R.S. and S.S.'s care, custody, and companionship is a central right that "warrants deference and absent a powerful countervailing interest, protection." *Stanley*, 405 U.S. at 651. This is especially true in the termination context, because termination "works[s] a unique kind of deprivation." *Lassiter,* 452 U.S. at 27.

Mother was given "Shared Parental Responsibility", but the court ordered supervised visitation which cancels out the normal visitation schedule for custody, and limits her contact to 2 hours a month at the local visitation center, essentially terminating her constitutional right to have a home and family with her natural born children.

Fit parents, who are victims of domestic violence, and whose children disclose sexual and/ or physical abuse, are faced with the loss of their parental rights, and have more critical need for Constitutional protections as their liberty interest to their children as their rights are being

terminated completely by the family court or parents are being placed on supervised visitation for years without a case plan or reunification plan.

Without a finding of unfitness by clear and convincing evidence, how can this Mother be deprived of her constitutional rights and be denied contact with her minor children and be court ordered for over 4 years at the local visitation center and have only 82 hours of contact?

Protective parents rights in the United States of America are in need of constitutional protection as they are losing custody for taking action, based on good faith allegations of abuse, made by the children, supported by the facts, that they need protection from abuse, and that should be a fundamental right of a fit parent, to protect their children without losing custody, without findings by the trial court of any detriment. This violates their substantive due process rights, because they took reasonable action to protect them from abuse and lost custody.

The constitutional protection of a right to parent children is a fundamental right and upheld in the recent decision in *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000).

A fundamental right may only be limited in circumstances where the government's interest in a specific matter of public importance outweighs the individual's fundamental right, and where the limitation on the fundamental right is as narrow as possible for achievement of an important governmental goal.

In Fourteenth amendment liberty analysis, a determination that a party's constitutional rights have been violated requires a "balancing [of] liberty interests against the relevant states interest." *Youngberg v.Romeo*, U.S. 307, 321, 73 L. Ed. 2d 28, 102 S.Ct. 2452 (1982). This balancing of interests has been applied in cases involving intimate association rights. See *Winston* ex rel. *Winston v. Children & Family Servs.*, 948 F. 2d 1380, 1391 (3d Cir. 1991), cert. denied, 119 L. Ed. 2d 225, 112 S. Ct. 2303 (1992); *Arnold,* 980 F. 2d at 313; *Franz,* 791 F. Supp. At 833; *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1010 (N.D. Ill. 1989); *Whitcomb v. Jefferson Dept' of Social Servs.*; 685 F. Supp. 745, 747, (D. Colo. 1987).

Perhaps the best example of the government's interest is in child abuse cases. To determine if a person's familial association rights have been violated, a court must weigh two factors. A court may intrude on the fundamental right to parent only where the intrusion makes sense on an objective basis. Of course, preventing a child from being injured or killed objectively is the kind of governmental interest that warrants intrusion into a fundamental right. If the action of the court or governmental actor constitutes an unreasonable intrusion into the associational right it is not allowed and cannot be tolerated.

In *M.L.B. v. S.L.J.* 519 US 102, 117 S. Ct. 555 (1996) states that choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of

basic importance in our society" rights sheltered by the 14th Amendment".

> Justice Thomas wrote in his dissenting opinion in *M.L.B.,* (joined by Chief Justice Rehnquist and Justice Scalia) examined the safeguards usually present in a termination action: an impartial tribunal applying procedural and evidentiary rules, the right to confront opposing evidence and witnesses, application of clear and convincing evidence standard, representation by counsel or alternatively the trial court's determination no counsel is required under the circumstances, and appellate review of the denial of counsel and the merits of termination. See *M.L.B.*, 519 U.S. at 132 (Thomas , J. dissenting).

The standard of clear and convincing evidence was not met, and the record clearly shows Petitioner is a model parent.

This Court in *Lassiter v. Dept. of Social Services* 452 US 18 (1981) held that "the companionship, care, custody, and management of his or her children" is an important interest that "undeniably" warrants deference and, absent a powerful countervailing interest, protection". A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is a commanding one.

The liberty interest at issue in this case – the interest of parents who have never relinquished their fundamental right to the care and upbringing of their children, but whose rights were terminated or restricted by rulings by family courts who failed to protect their children from documented abuse, and violated the safe parent's rights to access to their children, and gave unsupervised, total contact, and sole physical custody to the known child molester and /or batterer.

In this Court's ruling on *Moore v. East Cleveland* 431 US 494 (1977) and *Meyer v. Nebraska* and *Pierce Society of Sisters* have consistently acknowledged a "private realm of family life which the state cannot enter".

The Petitioner lost physical custody of her children in April 2007, and all of the reports of the Family Visitation Tree House Center are perfect. This ruling violates Mother liberty rights to have a meaningful relationship with her children.

> In *Cleveland Board of Education v. La Fleur* 414 US 632 (1974) this court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. There is a right "to be free from unwarranted governmental intrusion so fundamentally affecting a person as to whether to bear or beget a child".

There is a long history of this Court's protection of parental rights as in *Wisconsin v. Yoder* 406 US

205 (1972) when it stated "The history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children". This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

Battered mothers and their children have their fundamental liberty rights violated when they lose physical custody of their children.

Alarming statistics about the plight of America's children are stated in The Leadership Council, Child Abuse and Interpersonal Violence (LC), which says that more than 58,000 children a year are ordered into unsupervised contact with physically or sexually abused parents following a divorce in the United States. Experts at the LC consider the crisis in our family courts to constitute a public health crisis.(xii)

On March 2, 2011, The SF Weekly published an article by Peter Jamison, front cover of the paper said "ILLEGAL GUARDIANS" When judges award child custody to abusive parent's, the family court system is broken. (xiv)

> It states that "Interviews with dozens of parents, activists, lawyers, judges, children, and former family court employees, as well as a review of hundreds of pages of family and criminal court documents, indicate that the system's methods for assessing whether child sexual abuse or spousal battery has taken place findings that are critical to deciding

> whether a parent should retain custody of or visitation rights with a child- fall short of standards accepted by domestic violence experts and the criminal justice community. The results can be tragic".

II. The Ruling By The Fifth District Court of Appeals Conflicts With Decisions of Other Florida Appeals Courts and US Supreme Courts, and Fails to Protect Battered Mothers from Losing Custody of their Children, When They Took Reasonable Action To Protect Them From Abuse. This Violates A Fit Parents Constitutionally Protected Right To Custody of Their Children, Without A Finding Of Unfitness By Clear And Convincing Evidence. The Ruling is Unconstitutional and Challenges the "Best Interests of the Child Standard".

This case is of national importance and US Supreme Court review is needed as this case conflicts with the rulings from the First, Second, Fourth, and Fifth District Court of Appeals cases on the fundamental right of a fit parent to the care and nurture of their children, and whether courts can deprive a fit parent of their constitutional rights to their biological children, because the court determined it was in the children's best interest, without a finding of unfitness by clear and convincing evidence.

The Public Policy of the State of Florida in regards to Florida Child Custody determinations, Best Interests of the Children 61.13 (2)(b)1.states:

The Court shall determine all matter relating to custody of each minor child of the parties in accordance with the best interests of the children and in accordance with the UCCJE, Uniform Child Custody Jurisdiction and Enforcement Act. It states:

> 1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage is dissolved and to encourage parents to share in the rights and responsibilities and joys of child rearing. There is no presumption for or against the father or the mother of the child or for any specific time-sharing schedule when creating or modifying the parenting plan of a child.
>
> 3. For purposes of establishing or modifying parental responsibility and creating, developing, approving or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship between each parent with regard to his or her minor child and the best interest of the child shall be the primary consideration. "Best Interests of The Child" shall be made by

> evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including but not limited to:
>
> (m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless whether a prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

In this case, in the "Retrial of Custody of Children", the court heard father admit (on transcript) to child physical and sexual abuse to the minor children, and that he verbally abused the Mother in front of the minor children. The trial court in the oral ruling on June 26, 2009, states: "The Court again finds that nothing inappropriate, sexually or physically ever occurred between the Former husband and the children". A parenting plan is to consider the "Best Interests of the Child" by evaluating all the factors, including evidence of domestic violence, and child abuse.

This ruling was erroneous as the father admitted to abusing the children, but the trial court dismissed, suppressed, and ignored credible evidence of child abuse and domestic violence, and ruled once again that it was "in the best interests of

the children" for the father to continue to have Sole Physical Custody and Mother was to continue her Supervised Visitation. This contact is 2 hours a month at the local visitation center, as father has refused all of Mothers 15 proposed supervisors

The ruling by the Fifth District Court of Appeals on 12/7/10 affirmed the trial court's ruling on the "Retrial of Custody of Children" of Judge Shawn L. Briese. The Honorable Judge Torphy, Presiding Judge, and the Honorable Judge Evander and Honorable Judge Cohen affirming the ruling that Mother's contact must continue to be Supervised, and that Father should continue to have Sole Physical Custody, conflicts with the prior rulings by this Fifth District Court of Appeals and the First, Second and Fourth District Court of Appeals, and US Supreme Court cases.

The issue of a fit parent to the custody, care and nurturing of her children is a fundamental right protected by the Constitution of the United States First, Fifth, Ninth and Fourteenth Amendments.

In Padgett v. Dep't of Health & Rehab. Services., 577 So. 2d 565 (Fla.5th DCA1991) it states that there is a well-recognized fundamental right of parents to have the custody and companionship of their children.

In O.M. v. Dep't of Children and Family Servs. (In G.C.A.), 863 So. 2d 476, 480 (Fla. 2d DCA 2004) states that the least restrictive test requires that "measures short of termination be utilized if such and permit the safe re-establishment of the parent-child bond".

In this case before this Honorable Court the Petitioner, Linda Marie Sacks, Mother to R.S. and S.S. for 4 years and 1 months has had a PERFECT record at the Family Tree House Visitation Center, and all of the records show a loving, caring, parent, and a loving, caring bond with her children, R.S. and S.S.

No bond is more precious than the bond between parent and child, and a parent's right to the care and custody of her children is an element of liberty guaranteed by the First, Fifth, Ninth and Fourteenth Amendment of the United States Constitution.

In Sacks v.Sacks 991 So. 2d (Fla.5th DCA 2008), a ruling by the Fifth District Court of Appeals in August 2008, (Case 5D07-1682), REVERSED and REMANDED the issue of child custody back to the lower Court, for a violation of Mothers Constitutional rights, so Petitioner should never have lost custody of her children.

This latest ruling by the Fifth District Court of Appeals under review by this Court conflicts over abuse of discretion when the substantial competent evidence does not support the erroneous findings by the trial court, and violates the constitutional liberty protections long upheld by this Court.

The Retrial of the Custody of Minor Children in April 2009, showed no evidence that Mother ever engaged in any conduct toward her children that would threaten their lives, safety, well being, or physical, mental or emotional health.

Respondent, David Sacks, and his two co-counsel, Mr. Rose and Mr. Ross never presented any case, never called any witnesses, but asked the trial court to give Father sole physical custody of the minor children and continue to restrict Mother to Supervised Visitation.

The trial court, in his oral ruling on the issue of child custody insisted that Mother should continue to be supervised because she did not buy greeting cards or presents for the father while on Supervised Visitation and that Mother talked about the trial court's ruling restricting her to Supervised Visitation with a media outlet in New York.

The trial court also stated there is NO child physical or sexual abuse by the father to the minor children, and this ruling was not supported by the trial record as Father admitted to wiping down the vaginas of his school age children and father also admitted to an altercation in the home where R.S. at age 8, got a split lip and blood.

This is consistent with the ruling in Donn v. Donn, 733 So. 2nd 581 (Fla. 4th DCA, 1999) where the appeals court noted that there were numerous inconsistencies between the Final Judgment and fact as presented in the Final Hearing and this was REVERSED and REMANDED for a NEW HEARING.

In Clark v. Clark, 852 So. 2nd 1016 (Fla. 1st DCA 2002), the court's ultimate finding, expressed either on the record or in the Final Judgment that an award of primary residential custody to one parent is in the best interests of a child, is sufficient to sustain the award so long as there is substantial

evidence in the record that permits the court to properly evaluate the relevant facts.

In Bevil v. Carson, 966 So. 2nd 1007, 1009 (Fla. 5th DCA 2007), in reviewing a custody determination the appellate court considers where there is substantial evidence to support the factual finding by the trial court and whether it is in the bests interests of the child. If substantial evidence does not support the factual finds then the trial court abused it's discretion, Fuller v. Fuller 13 So. 3d 1108 (Fla. 5th DCA 2009).

In Knifley v. Knifley, 944 So. 2d 1136 (Fla. 5th DCA 2006) the trial court finds that the best interest of the child must be supported by competent, substantial evidence. The evidence in this case, clearly shows that Linda Marie Sacks, Mother to R.S. and S.S. is a loving, caring Mother, yet the trial court again took the erroneous position that it was in the children's best interest that Mother's contact must continue to be supervised, and Father should have Sole Physical Custody, once again.

In the Retrial of the Custody of the Minor Children, April 2009, Mother admitted that she did an interview on Chan. 9 News in New York and the trial court of Judge Shawn L. Briese, in his oral and written ruling expressed a concern that the minor children will discover these internet postings which would be detrimental to the minor children. There was no evidence that was or would be detrimental to the minor children.

In Burger v. Burger 862 So. 2nd 828, 28 (Fla. 2nd DCA 2003) for the trial court to consider a

parents conduct on the issue of child custody, the evidence MUST show a direct impact on the child, the possibility of a negative impact is not sufficient. The connection between the conduct and the harm to child must have an evidentiary basis but cannot be assumed.

In the same "Retrial of Custody" the trial court heard documented evidence of child physical and sexual abuse as Respondent, Father, David Sacks admitted to an altercation in the kitchen of the family home, with R.S. that resulted in her getting a split lip and blood, but this was not a concern to Judge Briese.

The father also admitted to wiping down the vaginas of his school age children, and these admissions by father, matched the Dept. of Children and Family, Child Abuse Hotline Reports, and matched the Police reports, as well as the Mothers Injunction of Protection filed to protect her children from documented abuse, all of which were dismissed, ignored and suppressed by the trial court.

While the state and family courts have a paramount interest in protecting children from harm, the trial court heard documented abuse by the Father to the minor children, but failed to protect R.S. and S.S. and gave father sole physical custody once again.

It is a well-recognized fundamental right of a parent to have custody and companionship of their children, one has to wonder is it an abuse of discretion by the trial court for not removing the unjust supervised visitation ruling and a violation

of a Mothers Constitutional Rights to the care and custody of her children and allowing the Father to continue to have sole physical custody with admissions of abuse to the minor children.

III. This Case Presents The Ideal Vehicle In Which To Resolve These Important Questions.

This case is the ideal vehicle in which to resolve these questions. This case is a national case and is of national importance. This could have an impact on the general public, and all of Florida's Mothers and their children, and all of America's children involved in custody visitation scandal cases with domestic violence and documented evidence of child sexual and /or physical abuse to the children.

This case is an example of the crisis in the family courts all over America where a Battered Mother loses physical custody of her child(ren) for making a good faith allegation of abuse, with documented evidence in her effort to protect her children, and all contact with her children is terminated or is placed on Supervised Visitation, indefinitely with no case plan or reunification plan.

A parents constitutionally protected right to a relationship with their children and it is among the most fundamental liberties protected by the Constitution. *Troxel v. Granville*, 530 U.S. 57, 65-67 (2000).

Barry Goldstein Esq. addresses the issue of the Crisis in the Custody Court System, and Custody Visitation Scandal Cases, where there is compelling evidence of the Father's abuse, and lack of any

evidence that the Mother is unsafe, but yet Father is given physical custody and the safe, "protective parent", is court ordered to supervised visitation, and children are forced to live with an abusive parent. It also addresses the family court's failure to recognize domestic violence cases and protect the children and their protective mothers.(xi)

In the new book Domestic Violence, Abuse and Child Custody Legal Strategies and Policy Issues Editors: Barry Goldstein, J.D. and Dr. Mo Therese Hannah Ph.D. addresses the issue how family court Judges across the U.S. have ordered thousands and thousands of children into unsupervised visitation with abusive biological fathers. In many cases, Mothers have been denied any form of custody, with some losing all custody, or are placed on Supervised Visitation. (xi)

This issue of a safe protective parent, losing custody, and family courts all over America not protecting our children is being addressed by national advocates as children are being removed from safe, protective mothers, and given to their identified abuser at alarming rates.

Connie Valentine and Karen Anderson from the CPPA, California Protective Parent Association, are requesting that Senators have Congressional Hearings on the Failure of Family Courts and Child Welfare Services to Protect Children. (x)

From case studies, a pattern is evident, and the history of this case, is a perfect example of the criteria of the custody visitation scandal cases. It also addresses ongoing research by Geraldine

Stahly, Ph.D. who echoes findings from many studies showing that children are being removed from safe parents and given to dangerous, violent and /or incestuous parents. (xiv)

This issue is of great importance, and has an impact on the general public, as this custody crisis is currently affecting 39 states, is important to all of Florida's children, and all of America's children.

US Supreme Court review is needed for violations of constitutional protections for fit parents to the care and nurture of their natural born children, and as they assume the role of "Protective Parent's", to act in the best interests of their children, to protect them from documented abuse, and "shouldn't they be afforded the same constitutional protections?"

In custody cases, in which they make a good faith allegation of abuse, with documented evidence, and take reasonable action based upon a belief, supported by the facts, and they lose physical custody of their children, and their access to their children is terminated or they placed on Supervised Visitation, with no case plan or reunification plan, and the alleged abuser gets sole physical custody; isn't this a violation of a parents constitutional right to their children?

More importantly, what impact does this have on the thousands and thousands of children who are court ordered to live with an abusive parent and whom the child identified as the perpetrator of sexual and/ or physical abuse?

Only a decision of this court can provide uniform protection for a protective parent who is a victim of domestic violence and whose children disclose child sexual and /or physical abuse, by the other parent. This is promised by the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States of America.

These constitutional violations are happening in cases all over the United States as evidenced by the latest research and child advocates. A review by this Court makes this case particularly well-suited as an opportunity to explore the effects of child custody decisions which involve documented evidence of abuse, and domestic violence and how a fit parent can lose custody, and the offending parent can get sole physical custody.

The NOW National Organization for Women in the Spring 2011 Newsletter of the NOW Family Law Ad Hoc Advisory Committee explores what can happen to a protective mother and her children when she does nothing more than try to protect her children.(xiii)

The newsletter states "Women and children face a national crisis in the family law courts of the United States". NOW recognizes this crisis and seeks to address the discrimination against women in family courts.

The Petitioner, Linda Marie Sacks is featured and has been chosen as the "Poster Mother" of the Family Court Crisis.

The NOW Family Law Committee has also published abrochure,"Crisis For Women In Family Court" *WhatTo Expect And How To Fight Back*(xiii)

On June 2, 2009 Attorney General Eric Holder, via Video Summit on the Intersection on Domestic Violence and Child Maltreatment asked: "Why are Mothers, who are victims of domestic violence, losing custody of their children to the courts or child protection services"? (xii)

The O Magazine in November 2006, published an article "Please Daddy No", by Jan Goodwin and it shows the crisis facing children who are victims of child sexual abuse by a parent or guardian, and looks at sex abuse within the family walls. It addresses legal loopholes for offenders and how they are allowed to return home, and how the judicial system in many cases, turn a blind eye to it. The article received a Tower Award for the best Public Service Article. (xiii)

Dr. Phil on April 14, 2010 had a show that shined a light on America's family courts system and how often it fails its citizens. (xi)

In "The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases" by Merrilyn Mc Donald states: A common defense tactic in sexual abuse cases is to discredit those who act to defend the child. Focusing on the Mother instead of the offender has a long history in our society and our legal system. It does not serve the best interests and protection of children. (xii)

A Mothers Journal, Let My Children Go, by Wendy Titelman is about children placed in the custody of their abusive parent.(xv)

> Dr. Jay Fink says "it's an important book to read because it provides an extensive demonstration of the corruption in our family courts, particularly concerning women and children."Seth Goldstein Esq. says"is a moving account of a failure of a system that is supposed to be protecting children". Hon. Sol. Gothard, J.D. says "the problems expressed by Wendy Titelman in this book are epidemic and widespread" (xi)

Kathleen Russell from the Center for Judicial Excellence was featured in the California Progress on 10/19/09 in the article "When Family Courts Get It Wrong".

> Kathleen says "When a parent harms his or her own child, family courts are supposed to step in and safeguard the victim. Can you imagine what a tragedy it would be if courts awarded custody to the wrong parent- the abuser? Actually, according to one conservative estimate, more than 58,000 children per year are ordered by family courts into unsupervised visitation contact with physically or sexually abusive parents following a divorce in the United States. The fact that this type of scandal is taking

> place in the American justice system defies the imagination. Not since the Roman Catholic Church pedophile scandal has the US seen this level of institutional harm inflicted on innocent children". (xiv)

This is a case of national importance for all of America's children and their fit parents whose constitutional rights to the custody, care and nurture of their children have been violated.

These "protective parents" only took reasonable action, based upon a belief, supported the facts, and evidence that their children needed protection from abuse, and acted in their children's best interest. Children have a fundamental liberty right to be in the care of a safe, fit parent, not an abusive one.

The US Supreme Court, is the only court that can redress for these egregious violations of constitutional rights and protect a parent-child relationship when the parent is a victim of domestic violence, and their child(ren) need protection from abuse.

In courts all over America the safe, fit, "Protective Parents" are sanctioned by the courts, and lose custody, but the known batterer and/ or perpetrator of child physical and/ or sexual abuse will get sole physical custody by the family courts or child protective services. Justice will prevail one day.

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Linda Marie Sacks
Pro Se
P.O Box 730966
Ormond Beach, Florida 32173
386-453-3017

May 6, 2011

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT JULY TERM 2010

NOT FILED UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION AND IS FILED,DISPOSED OF

Case No. 5D09-3752

LINDA MARIE ANNE SACKS,

Appellant,

v.

DAVID MICHAEL SACKS AND FOOD SUPPLY, INC.,

Appellees,

_____/

Decision filed December 7, 2010

Appeal from the Circuit Court for Volusia County, Shawn L. Briese, Judge.

Linda Marie Anne Sacks, Ormond Beach, pro se.

James L. Rose and Leonard R. Ross, of Rice and Rose, P.A.., Daytona Beach, for Appellee

PER CURIUM

AFFIRMED

TORPHY, EVANDER AND COHEN, JJ., concur

IN THE FIFTH DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA FIFTH DISTRICT
Case No. 5D09-3752
LINDA MARIE ANNE SACKS,
Appellant,
v.
DAVID MICHAEL SACKS AND FOOD SUPPLY, INC.,
Appellees.
_____/

DATE: February 7, 2011
BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Certification, filed December 21, 2010, Motion for Clarification and for a Written Opinion, filed December 21, 2010 and Motion for Rehearing En Banc, filed December 21, 2010 are all denied.

I hereby certify that the forgoing is
(a true copy of) the original Court order.

"s/". SUSAN WRIGHT, CLERK
SEAL: DISTRICT COURT OF APPEAL COURT
STATE OF FLORIDA
cc: Linda Marie Anne Sacks
Leonard R. Ross, Esq. James L. Rose, Esq.

APPENDIX C C1

IN THE CIRCUIT COURT, SEVENTH JUDICIAL DISTRICT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE 2004-30312-FMCI
DIVISION 30

FILED
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IN RE: The Marriage Of
LINDA MARIE ANNE SACKS,
Petitioner/Wife,

v.

DAVID MICHAEL SACKS and
FOOD SUPPLY, INC.,
Respondents/ Husband.

_____/

FINAL JUDGMENT REGARDING RETRIAL OF CUSTODY OF CHILDREN

This cause having come before this Court on April 28, 2009, upon remand from a previously entered a Final Judgment of Dissolution of Marriage on April 16, 2007, nunc pro tunc April 3, 2007 (Final Judgment). Said Final Judgment was appealed by the Former Wife with the Fifth District Court of Appeal having affirmed all aspects of the Final Judgment, except for the reversal of the

ruling regarding the custody of the minor children due to an issue raised by the Former Wife regarding the date of the receipt of a supplemental report from Dr. Deborah Day, and Ordered a new hearing in regard to the custody of the minor children.

This Court held a trial on the remanded issue of custody on April 24 and 28, 2009 (latest trial), and the Court having reviewed and considered the transcript of a hearing held on June 15, 2004 that was entered into evidence; the transcript of a hearing on August 6, 2006 that was entered in evidence; the report and supplement thereto authored by (DOCKET 591)

Dr. Deborah Day that was entered into evidence without objection; and having heard testimony of the parties and their witnesses and argument of counsel, this Court makes the following findings of fact:

GENERAL FINDINGS

1. This court has jurisdiction of this cause and the parties.
2. There are two minor children born of this marriage, to wit:
   a. Rebecca Sacks, a female, born November 20, 1994; and
   b. Samantha Sacks, a female, born October 19, 1996.

The children have resided with the Former Husband at 9 Broadwater Road, Ormond Beach, Florida and 40 Broadwater Road, Ormond Beach, Florida since the entry of the Final Judgment.

FINDING REGARDING SPECIFIC ISSUES

This Court previously made findings with respect to the custody of the minor children in the Final Judgment wherein the Court ruled that the Former Husband was designated as primary residential parent, with the Former Wife having supervised visitation. This Court specifically confirms and reincorporates the findings and ruling in the Final Judgment herein. In addition, this Court makes the following findings in regard to matters reviewed and heard by the Court at the latest trial:

1. **Credibility.** The Court finds that the Former Husband and other witnesses that testified at the latest trial to be credible.

The Court has substantial concerns with regard to the Former Wife's credibility for a number of reasons that fall within three specific areas; first the demeanor of the Former Wife; second, Inconsistencies in believability in her own testimony; and third, no other evidence supports her testimony, but, in fact, contradicts her testimony. The Court found the Former Wife's testimony not to be credible during previous hearings and during the original trial, as well. The court again finds that the Former Wife's testimony was not credible at the latest trial.

2. **Allegations of Sexual Abuse.** The Court found in the Final Judgment and at various subsequent hearings that the Former Wife's allegations of sexual abuse against the Former Husband were not supported by any evidence. The allegations were repeatedly investigated and rejected by the Dept. of Children and Families and

its associated agencies, the police and multiple therapists. The minor children also repeatedly denied that the Former Husband had any inappropriate contact with them The Court again finds that nothing inappropriate, sexually or physically, ever occurred between the Former Husband and minor children.

3. **Parental Responsibility and Custody:** The Former Husband's request through his pleadings was for Shared Parental Responsibility; and at trial was for Sole Parental Responsibility for both children. The Former Wife requested Shared Parental Responsibility through her pleadings and/or evidence presented at trial. Both parties were requesting designation as Primary Residential Parent for both minor children. In making its determination regarding parental responsibility and a designation of the primary residential parent, this Court makes an evaluation of the following factors outlined in Florida Statutes §61.13(3) in relation to the evidence at the latest custody trial in regard to those items that have occurred since the original trial and sets forth its findings with respect to each factor below:

a. *The parent who is more likely to allow the children frequent and continuing contact with the non-residential parent.*

The court finds, based upon the evidence presented, that the Former Husband is the parent more likely to allow the children frequent and continuing contact with the Former Wife. Specific examples of this include:

(i) The Former Husband allowing the children to go with the Former Wife

on his visitation day because the Former Wife's sister was visiting; when the Former Husband requested replacement of the day which he yielded to the Former Wife, evidence was presented that the wife refused.

(ii) The Former Husband has continued to include the Former Wife in the minor children's lives, including e-mailing her about the minor children's activities, including doctor's appointments, school activities and other extracurricular activities.

(iii) The Former Husband included the Former Wife in minor child, Rebecca's, Bat Mitzvah.

(iv) The Former Husband made sure that the minor children had gifts for the Former Wife for her birthday, Christmas, Mothers Day and Hanukah.

(v) The Former Husband returned from his vacation early so the Former Wife could have visitation with the minor children.

The Former Wife has made appointments for the minor children with counselors and therapists without the Former Husband's knowledge or involvement. The Former Wife has posted disturbing items on the internet indicating that the Former Husband abused her and kidnapped the minor children. This Court has rejected these allegations and is concerned the minor children will discover these internet postings, which would be detrimental to the minor children. Since the original trial, the Former Wife has made no attempt to get birthday, Father's Day or holiday

cards for the minor children to give to the Former Husband.

b. The love, affection and other emotional ties existing between the parents and the children.

The court certainly finds that love, affection and deep emotional ties exist between the Former Husband and minor children. With respect to the Former Wife, the Court finds she loves Samantha and Rebecca; however Court has concerns regarding the Former Wife application of that love and concerns about actions that the Former Wife has taken or has not taken.

All the reports indicate that the Former Wife's actions are destructive in regard to the minor children, yet she persists in those actions, which is a concern to the Court. It is increasingly clear that the minor children are angry with the Former Wife's behavior with regard to her continued allegations against the Former Husband. The Trial Court also finds that the Former Wife made a choice by not exercising as many supervised visits as she could simply because she does not agree with the(8/5 Handwritten note by Judge Briese "individuals appointed to be") supervisors. The Court finds that behavior does not benefit the minor children.

c. The capacity and disposition of the parents to provide the children with food, clothing and medical care and other material needs.

The Court finds these factors have not changed since the original trial.

d. The length of time the children have lived in a stable, satisfactory environment and the desirability of maintaining continuity.

Since the original trial, the minor children have lived with the Former Husband. All the evidence suggests that the minor children are thriving with the Former Husband. The Court specifically finds that the environment has been stable and satisfactory, and there is a desirability to maintain that continuity.

e. The permanence, as a family unit, of the existing or proposed custodial home.

Since the original trial, the Former Husband has remarried, providing even more stability, which is a better situation for the minor children.

f. The moral fitness of the parents.

This ruling on this factor has not changed since the original Final Judgment was entered, except that the Court remains concerned about the Former Wife continual allegations of sexual abuse against the Former Husband, despite expert opinion that no basis for such allegations exists. There is absolutely no indication that the Former Husband has abused the minor children in any way as alleged repeatedly by the Former Wife. The Former Wife's continuous allegations raise moral fitness concerns with the Court.

g. The mental and physical health of the parents.

The findings remain the same as set forth in the original Final Judgment. The Court parenthetically notes it remains concerned with regard to a parent who continues down the road of

making abuse allegations when there is no evidence of such.

h. The home, school, and community record of the children.

The minor children have thrived at home, school and in the community while living with the Former Husband since the original trial. This factor favors the Former Husband.

i. The reasonable preference of the children.

There is a no evidence of the preference of the minor children to date.

j. The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

It is clearly apparent from the evidence that this factor favors the Former Husband. Testimony indicates that despite everything that has occurred this cause the Former Husband has spoken about the Former Wife in a positive light. The Former Wife's own testimony indicates that the Former Husband has attempted to foster a good relationship between the Former Wife and the minor children.

On the other hand, the Former Wife actions, as described herein, indicate that she has not made an effort to encourage a close relationship between the minor children and the Former Husband.

k. Evidence that any parent has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to Florida Statute §741.30.

The Court finds its directed verdict at the conclusion of the Former Wife's request for an injunction fits within this subsection.

l. Evidence of domestic violence or child abuse.

There is no evidence of domestic violence and absolutely no evidence of child abuse.

m. Any other fact considered by the Court to be relevant.

No other factors were considered by the court.

The Court finds that factors described above used to determine the primary residential parent for the minor children clearly support the Former Husband. Based upon the above findings, the Court designates the Former Husband as primary residential parent and the Former Wife as secondary residential parent. The Court again considered awarding the Former Husband sole parental responsibility, but will not do so at this time. The parties shall have shared parental responsibility for the minor children with the Former Husband continuing to be solely responsible for making the decisions regarding the minor children's psychological and psychiatric counseling issues. If the Former Wife continues the behavior and actions (8/5 Handwritten in by Judge Briese "as") she has in the past, the Court may consider an award of sole parental responsibility to the Former Husband for the minor children, upon the filing of a post-judgment pleading.

4. **Visitation/Contact:** The Court again finds it appropriate under the facts of this case that

the Former Wife have supervised visitation with the minor children in that she has continued the same behavior that concerned this Court since the time of the original trial. The supervised visitation shall continue to be that described in the Visitation Schedules/Guidelines (a copy being attached to the orgiginal Final Judgment as Exhibit "A"), subject to the availability of a party to supervise the visitation. Notwithstanding the Visitation Schedule, both parties shall be allowed to see the minor children on their birthdays.(8/5 Handwritten deletion by Judge Briese ("At this time the parties are agreeable to")New Sentence now starts with: The Husband's parents, Judy Stamper and The Family Tree House (8/5 Handwritten in by Judge Briese "are authorized") supervisors for the Former Wife's visitations. The identity of the supervisors is without prejudice. The parties shall continue to communicate about additional people who could supervise the visitation. * Should the Former Wife stop her destructive behavior toward the minor children and the situation settles down, the Court will entertain a post dissolution petition to allow unsupervised visitation.

*(Handwritten in by Judge Briese "additional visitation supervisors may be agreed to the parties in writing or approved by the court by court order upon the filing of an appropriate pleading".

AS A RESULT IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

A. The parties shall have shared parental responsibility of the minor children, with the Husband being designated as primary residential parent and the Wife secondary residential parent.

The Wife shall have supervised visitation as described above.

This Court hereby expressly retains jurisdiction of this cause and of the parties hereto to enter such further orders as may be deemed necessary by this court to enforce or modify the provisions of this Final Judgment.

All remaining provisions of the Final Judgment and all subsequent Orders not otherwise modified herein shall remain in full force and effect.

DONE AND ORDERED this _____ day of August, 2009 at Daytona Beach,(Handwritten "s/" 8/11/09 nunc pro tunc 6/26/09)_____

SHAWN L. BRIESE, CIRCUIT JUDGE

Conformed copies to:

James L. Rose, Esq., Attorney for Husband, P.O. Box 2599 Daytona Beach Florida 32115

Leonard Ross, Esquire, Attorney for Husband, 642 N. Halifax Avenue Daytona Beach, Florida 32118

Arlaine Rockey, Esquire, P.O Box 656, Marshall, North Carolina 28753

Seal: Circuit Court Clerk Volusia County, Florida Suum Cuique

Stamp: STATE OF FLORIDA, VOLUSIA HEREBY CERTIFY the foregoing is a true copy of the original filed in this office. This 23, Oct. 2009 By V. Stafford Deputy Clerk

APPENDIX C

"EXHIBIT A" TO FINAL JUDGMENT ON THE RETRIAL OF CUSTODY OF CHILDREN

VISITATION SCHEDULES/GUIDELINES
LOCAL

Children have the right to spend substantial time with both parents. Each parent will exercise good faith and consent to all reasonable requests by the other parent. The residential parent is expected to provide access to the children at unscheduled times, if requested, and if doing so does not unreasonably disrupt prior planned activities of the children or the residential parent. Therefore, not as a limitation, but as an extension of the foregoing, the non-residential parent is entitled to the following minimum visitation rights with the children.

(1) One evening per week from immediately after school/work through 8:30 p.m. If the parents cannot agree on the day, then it will be Wednesday.

(2) Every other weekend, commencing on Friday, after school/work through Sunday at 6:00 p.m. If the non-residential parent's regular weekend fall on a three-day weekend that is observed by both the non-residential parent and the children's schools, and the weekend is a holiday or special occasion not otherwise expressly provided for below, the non-residential parent will be entitled to the three day weekend.

(3) Easter weekend, Independence Day (from 9:00 a.m. July 4th, unless July 4th falls on a Friday or Monday, in which case it will be considered a 3-day weekend), and Thanksgiving weekend (from immediately after school/work Wednesday through 6:00 p.m. Sunday), in odd numbered years.

(4) School spring break from immediately after school/work the day school lets out through 6:00 p.m. the day before school resumes, in odd numbered years.

(5) The children will spend Father's Day weekend and the father's birthday with the father and Mother's Day weekend and mother's birthday with the mother.

(6) Birthdays of the children, in even numbered years.

(7) Christmas season, from immediately after school/work the day school lets out through December 25th at 1:00 p.m., in even numbered years In odd numbered years, form December 25th at 1:00 p.m. through 6:00 p.m. the day before school resumes.

(8) Two-day weekends provided for above are defined as after school/work on Friday through 6:00 pm. on Sunday. Three-day weekends are defined as after school/work the day before the weekend (Thursday or Friday) through 6:00 p.m. the last day of the weekend (Sunday or Monday). Although

several of the above visitation provisions are related to "school", the non-residential parent shall have comparable visitation with pre-school children.

(9) Holidays and special occasions delineated in sections (3) through (7) above have priority over regular weekday and weekend visitation.
(Exhibit A) on bottom of first page

(10) One-half of summer vacation. If the parents cannot agree upon the dates for such, then the visitation will commence at 9:00 a.m. on the second Saturday in June and continue for a period of six weeks, however the provisions regarding Father's Day, the children's birthdays, Independence Day (July 4th) have priority. During such time, the residential parent is entitled to the same weekday and weekend visitation otherwise provided to the non-residential parent. Notwithstanding, during the summer, each parent is entitled to reasonable extended uninterrupted out-of-town vacation time with the children.

(11) Both parents should strive to be punctual when transferring the children for visitations. If circumstances occasionally prevent punctuality, the parent will communicate and cooperate appropriately.

(12) Parents must give each other at least 24 hours advance notice (or if an emergency occurs, as quickly as possible), if they will be unable to exercise weeknight, weekend, Father's Day,

Mother's Day or birthday visitation. One week advance cancellation notice is required for summer. Cancellation notices as to Christmas and summer vacation must be in writing.

NOTE: Some of the foregoing provisions may need to be modified if children are enrolled in modified calendar/multi-track school programs. In such instance, visitation may need to be "tailored" by the parties to be consistent with the intent of these schedules/guidelines.

** Any relocation with children must be in compliance with § 61.13, Florida Statutes.

APPENDIX D D1

Manner in which the federal issues were raised:

Linda Marie Sacks, Petitioner, raised these issues throughout her case.
APPELLANT'S AMENDED INITIAL BRIEF states:

p.27

"If an allegation that a child is a victim of physical, mental or emotional abuse or neglect or sexual abuse perpetrated or allowed by a parent is supported by a preponderance of the evidence in determining custody and visitation that it is in the "best interests of the child" and shall not award custody of the child to the parent who presents a substantial risk of harm to the child".

p.28

"The standard of review for the trial court's finding and determination regarding primary residential responsibility is abuse of discretion. The trial court finds regarding the "best interest of the child" must be supported by competent substantial evidence."

p. 28

"The trial court misapplied the statuary factors contained in Chapter 61.13.The standard of review in awarding custody of children is abuse of discretion. Bevil v. Carson, 966 So. 2d 1007, 1009 (Fla.5th DCA 2007). In reviewing a custody determination the appellate court considers whether there is substantial competent evidence to support the factual finding of the trial court and

whether it is in the "best interests of the children". Id. If substantial competent evidence does not support the factual finds then the court abused it's discretion. Fuller v. Fuller, 13 So. 3d 1108 (Fla. 5th DCA 2009)."

p.39

In continuing to award Appellee, David Sacks, physical custody of the Minor Children, and continuing to keep Appellant, Linda Sacks on Supervised Visitation after the second retrial of custody of children the trial court failed to establish by clear and convincing evidence that mother was a detriment to her children or that she should continue to be supervised.

p. 40

In Fuller v. Fuller 13 So. 3d 1108 (Fla. 5th DCA 2009) addressed the findings by the trial court's ruling was in the best interest of the parties child for the husband to have primary residential custody, based on the wife's apparent disposition to draw unreasonable and alarming hysterical references from innocuous facts. This case was REVERSED and a new judge was appointed to hear the new trial. In making a custody determination the trial court must evaluate the non-inclusive factors set forth in section 61,13 (3), Florida Statutes (2007) and determine what residential arrangement would be in the "best interest of the child." As in Fuller v. Fuller, 13 So. 3d 1108 (Fla. 5th DCA 2009), the custody ruling was not supported by competent evidence.

p. 41

The trial court must make specific findings of fact supported by clear and convincing evidence.

Clark v. Clark, 825 So. 2d 1016 (Fla. 1st DCA 2002) the courts ultimate finding, expressed either on the record or in the final judgment that an award of primary residential to one parent is in the "best interests of the child, sufficient to sustain the award so long as there is substantial competent evidence in the record that permits the court to properly evaluate the relevant facts. West's F.S.A. 61.13 (3).

p.48

Due Process requires that the ruling from the trial court support its conclusions by clear and convincing evidence. Trial court "abuses its discretion" with respect to a child custody determination only when a reasonable person would take the view adopted by the trial court. Would any reasonable person agree with the trial court's ruling that the primary care and physical custody of the minor children R.S. and S.S. should be with the father and mother should only have supervised visitation?

The court is bound by law to apply the test and if no reasonable person could differ as to the appropriateness of the trial court's ruling, then the ruling must not stand. As a reminder, this court already found that Mother's Due Process rights were violated when her children were taken away in April of 2007 Sacks v. Sacks 991 So. 2d (Fla. 5th DCA 2007).

When the trial court gave the oral ruling on June 26, 2009 regarding the "Retrial of Custody of Children" it disregarded documented abuse. It is clear that this was a blatant disregard of documented abuse and evidence was suppressed,

dismissed and ignored. This strongly suggests bias or discrimination in making the decision regarding custody of R.S. and S.S.

REPLY BRIEF OF APPELLANT, Linda Marie Sacks states:

p.1

In L.T. v. Dept. of Health and Rehabilitative Services, 464 So. 2d 201, 202 (Fla.5th DCA 1995), the trial court must make specific findings of fact supported by clear and convincing evidence. All of the reports from the Family Tree House Supervised Visitation Center since the trial courts April 3, 2007 ruling requiring Mother's contact to be supervised are perfect and only reflect a healthy and loving bond between a Mother and her daughter's R.S. and S.S.

Mother, Linda Sacks has complied with the order of the court and with the terms and conditions of the Family Tree House Visitation Center. Evidence that Mother was a detriment, or should be supervised for a threat to the minor children, was not before the court as there is no evidence to support the ruling of continued supervised visitation.

p.2

Also in Moore v. Dept of HRS, 664 So. 2d 1137 (Fla. 5 DCA 1995), the trial court was reversed because the order terminating parental rights failed to specify what conduct the mother committed towards the children. All of the reports from the Supervised Visitation center were perfect,

but yet the trail court in the Retrial in April 2009 determined that Mother was a detriment to her children and her contact must continue to be supervised.

p3.

In Knifley v. Knifley, 944 So. 2d 1136 (Fla 5th DCA 2006) the trial court finds the "best interest of the child" must be supported by competent, substantial evidence, and yet the evidence in this case clearly shows that Linda Sacks was a loving mother, but yet the trial court took the erroneous position that it was in children's best interests that Mothers contact with R.S. and S.S. should be supervised and father should have SOLE physical custody once again.

In the Retrial of Custody, Harriet Kramer, a teacher at Temple Beth El for R.S. and S.S for 4 years testified that Linda Sacks, mother to R.S. and S.S. was a very loving and kind and very good mother. Appellant, Mother to R.S. and S.S., prior to April 3, 2007 was a class mom, soccer mom, community volunteer, primary caregiver to R.S. and S.S. and a "squeaky clean" Mom without drugs, no alcohol, no abuse, no infidelity, and as the witness testified, a loving and caring Mother. The evidence simply does not support the finding by the trial court and this is pivotal to the issues of custody and visitation was an injustice to R.S. and S.S.

p.4

The fundamental constitutional equal right of s loving, caring Mother is to be able to raise and nurture their children. The standard of review in

awarding the custody of children is abuse of discretion.

A parent has a constitutionally protected inherent right to a meaningful relationship with her children and must be treated equally under all of the 4th, 9th and 14th Amendment to the Constitution of the United States of America. (Exhibit B). There is no reason to excuse the judiciary participating in depriving the parents of the care and custody and time with their children".

p.4

The record is clear, Linda Sacks is a loving, caring, devoted mother who was concerned for the safety and well being of her children and tried to protect them and in doing so was placed on supervised visitation, unjustly.

p. 14

The evidence in this case indicated that the trial court is again violating the Mother's, Linda Sacks and her children's R.S. and S.S absolute right to equal protection under the law, and a fundamental constitutional right of a parent to a loving and meaningful with each other, and it is a fundamental liberty interest protected by the Federal and State Constitution, but sadly, not protected by the trial court in this case."

APPELLANT'S MOTION FOR REHEARING EN BANC Case 5D09-3752 filed 12/21/10

p.1

COMES NOW, the Appellant, LINDA MARIE ANNE SACKS Mother to R.S. and S.S., minor children, and files this Pro se Motion for Rehearing

En banc, pursuant to Florida Rules of Appellate Procedure 9.331 (d), and respectfully requests that the Court rehear the Panel's ruling on December 7, 2010 decision En banc. The appellant seeks rehearing because the decision (1) creates new law a matter of exceptional importance, and because (2) a rehearing en banc is necessary to maintain uniformity in this Court's decisions, (3) the per curium decision overlooks the public policy of the state of Florida in Statutes 61.13 that both parents share the rights, responsibilities, and joys of child rearing,(4) and conflicts with a parents constitutional rights to the care and nurture of their children.

p.3

A parent has a constitutionally protected inherent right to a meaningful relationship with his or her children and must be treated equally under all of the 4th, 5th 9th and 14th Amendments of the Constitution of the United States of America. Mother showed where substantial, competent evidence does not support the ruling by the erroneous findings of the trial court in the Final Judgment of the Retrial of Custody of Minor Children, which are pivotal to the issues of custody and visitation.

II EXCEPTIONAL IMPORTANCE

p.4

This panel's decision is of exceptional importance because it makes new law affecting the constitutional rights of all Floridians. This Court has noted that a case's exceptional importance may be established if the decision "may affect large

numbers of persons" or if the decision interprets "fundamental legal or constitutional rights". There is a national crisis in the family courts, currently affecting 39 states and this decision is pivotal to the issue of custody and visitation of all of Florida's children.

In Florida's Statute 61.13 (1) states that "it is the public policy of this state that each minor child has frequent and continuing contact with both parents to share the rights and responsibilities, the joys, of child rearing".

Mothers who make a good faith allegation of abuse, with documented evidence, in an effort to protect her children, should not be deprived of physical custody of her children, or have their contact supervised, indefinitely without a case plan or reunification plan from the trial court, and does a court's decision that prevents her from the care and nurture of her children violate the constitutional rights, which are protected by the constitution of the United States? This case is of national importance, and if ever a district court decision affected the constitutional rights of every Florida parent and their children, it is this decision.

III. INTRADISTRICT CONFLICT

p.5

En banc hearing is necessary to maintain the uniformity in this district's decisions in light of the panel's decision's as it conflicts with numerous cases in the Appeals Courts.

p.6 In 61.13 (2) Florida Statutes states that "the court shall order that the parental responsibility for a minor be shared by both parents unless the court finds that shared responsibility would be detrimental to the child. The trial court stated that Mother did a Chan. 9 news interview in New York at the Battered Mothers Custody Conference, and expressed a concern that the minor children will see these internet postings which would be detrimental to the minor children. There was NO evidence that this WAS or would be detrimental to the minor children.

This conflicts with Burger v. Burger 862 So. 828, 28 (Fla. 2nd DCA 2003), the Court stated, for the trial court to consider a parents conflict on the issue of child custody, the evidence MUST show a direct impact on the child, the possibility of an impact is not enough.

This ruling also conflicts with Knifley v. Knifley 944 So. 2d 201, 202 (Fla. 2nd DCA 2006) the trial court finds the "best interest of the child" must be supported by competent, substantial evidence, and yet the evidence showed Linda Sacks was a loving Mother, but yet the trial court decided Mothers contact must continue to be supervised.

This erroneous ruling by the trial court conflicts with Bevil v Carson 966 So. 2d 1007,1009 (Fla. 5th DCA 2007). In reviewing a custody determination the appellate court considers where there is substantial evidence to support the factual findings by the trial court. Appellant also cites Donn v. Donn 733 So. 2d 581 (Fla. 4th DCA 1999) where the appeals court noted numerous inconsistencies between the Final Judgment and fact as presented

in the hearing, and this case was REVERSED and REMANDED for a new hearing.

This is exactly the case, as the "Retrial" April 2009, heard evidence regarding abuse to the minor children by the father, David Sacks, but dismissed, ignored and suppressed documented evidence of abuse and ruled "nothing inappropriate ever happened." Appellee, Father David Sacks, admitted to "wiping the vaginas" of his school age children, and he admitted to an altercation in the kitchen of the family home with R.S. at age 8, that resulted in her getting a split lip and blood.

This evidence presented in the Retrial showed that these admissions by Father, matched the Police Reports, the DCF reports, as well as Mothers Injunction of Protection for Minor Children.

p.8

Appellant cites Clark v. Clark 825 So. 1075 (Fla. 1st DCA 2002) and Cadie v. Norris 817 So.2d 1075 (Fla. 5th DCA 2002).

IV. CONCLUSION

p.9

Appellant cites a constitutionally protected right to equal protection under the constitution.

This case is of national importance, and of great public importance to the parents and children of Florida to clearly uphold the rights of children to a loving, caring bond and contact with their parent, and be safe from abuse.

"Protective Parents" who bring forth good faith allegations of abuse, with documented evidence, in

their effort to protect their children should not be deprived of physical custody, or have their contact supervised, for years and years, with no case plan or reunification plan provided by the trial court.

p.10

WHEREFORE, Appellant respectfully prays that this Court grant this Motion for Rehearing En Banc and allow this Honorable Court of the Fifth District Court of Appeals to review the per curium decision on December 7, 2010 in the matter of custody of R.S. and S.S., and review a case of national importance and for all of Florida's children and their parents affected by the crisis in the family courts.

MOTION FOR CLARIFACTION AND WRITTEN OPINION filed 12/21/10

II. Basis for Supreme Court Review-Conflict Between the DCA's.

p.3

A. Conflict Over The Fundamental Right Of A Parent To The Care And Nurture Of Their Children By The Second District Court Of Appeals.

The issue of a parent to the care and nurturing of their children is a fundamental right protected by the Constitution of the United States First, Fifth, Ninth and Fourteenth Amendments.

In Padgett v. Dept. Of Health and Rehab Services, 577 So. 2d 565 (Fla. 5th DCA 1991) it states there is a fundamental right of parents to

have the custody and companionship of their children.

B. Conflict Over Abuse Of Discretion When The Substantial Evidence Does Not Support The Erroneous Findings By The Trial Court.

p.4

The Retrial of Custody of the Minor Children in April 2009, showed no evidence that Mother ever engaged in any conduct toward her children that would threaten their lives, safety, well being, or physical, mental or emotional health. Appellee, never presented any case, never called any witnesses, but the trial court continued to give Father Sole physical custody of the minor children and continue to restrict Mother to supervised visitation.

Appellant cites Donn v. Donn, 733 So 2d 581 (Fla 4th DCA 1999), Clark v. Clark, 852 So. 2d 1016 (Fla. 1st DCA 2002) and Bevil v Carson, 966 So. 2d 1007, 1009 (Fla. 5th DCA 2007), Fuller v. Fuller 13 So. 3d 1108 Fla. 5th DCA 2009), Knifley v. Knifley, 944 So. 2d 1136 (Fla. 5th DCA 2006) and Burger v. Burger 862 So. 2d 828, 28 (Fla. 2nd DCA 2003).

p.7

III. Other Factors Favoring Issuance of Written Opinion

It is a well-recognized fundamental right of a parent to have custody and companionship of their children, one has to wonder is it an abuse of discretion by the trial court for not removing the unjust supervised visitation ruling and a violation

of a Mothers constitutional rights to the care and custody of her children and allowing Father to continue to have sole physical custody with admissions of abuse to the minor children."

p.8

B. This Case Is Of National Importance

This case is of national importance and could have an impact on the general public, and all of Florida's Mothers and their children.

A written opinion is needed as this case is already a national case and is an example of the crisis in the family courts all over America where a mother loses custody of her child(ren) for making a good faith allegation of abuse, with documented evidence in an effort to protect her children, and all contact with her children is terminated or is placed on Supervised Visitation, indefinitely, with no case plan or reunification plan, or her parental rights are terminated.

III. Other Factors Favoring a Written Opinion

B. While a decision without a written opinion is the standard procedure, this case appears to be a circumstance in which a written opinion is warranted. As part of its extensive study in 2000, the Committee on Per Curium Affirmed Decisions issued a final report and Recommendations (PCA's Report) that guidelines for determining when a written opinion is warranted. The factors pertinent to this case are as follows:

There is arguable basis for Supreme Court Jurisdiction.

The issue decided can be expected to arise in further cases.

This decision is in conflict with that of another district.

The decision is in conflict with this Fifth District Court of Appeals.

This issue is of great importance, and has an impact on the general public, as this custody crisis is currently affecting 39 states, and is important to all of America's children. A written opinion would provide a basis for review by the Florida Supreme Court, and possibly the US Supreme Court in Washington D.C.

The uncertainty over basis for this Court's decision will likely result in additional litigation, additional appeals, and a written opinion would aid in the resolution of parents who are involved in custody cases in which a parent makes a good faith allegation of abuse, with documented evidence, takes reasonable action, based upon a belief, supported by the facts and loses physical custody of their children, and is placed on Supervised Visitation with no case plan or reunification plan.

The goals of justice and judicial economy will be well served by the issuance of an opinion in this case, and provide a legitimate basis for Supreme Court Review, citing all the reasons set forth above.

MOTION FOR CERTIFICATION filed 12/21/10

COMES NOW, the Appellant, Linda Marie Sacks, Mother to R.S. and S.S., minor children, and files this pro se Motion pursuant to Florida Rules of Appellate Procedure Rule 9.330 and asks that these questions be certified as questions of great public importance.

1. If a parent makes a good faith allegation of abuse, with documented evidence, in an effort to protect her children, should that parent be deprived of physical custody of her children or have their contact supervised, indefinitely without a case plan or reunification plan provided by the trial court?

2. Does a state court violate the First, Fifth, and Fourteenth Amendments when it deprives a parent of physical custody, and limits that parents contact to Supervised Visitation with her children, for taking reasonable action based upon a belief, supported by the facts that her children need protection from abuse?

3. Does a state court's custody decision that deprives a parent of access to her children indefinitely, unless supervised, without a find of unfitness by clear and convincing evidence, which effectively terminated a party's parental rights, violate the Fifth and Fourteenth Amendments?

WHEREFORE, the Appellant respectfully prays that this Court grant this Motion for Certification and allow these questions to be certified for the

Florida Supreme Court as these are questions of great public importance.

Respectfully submitted on this 21st day of December, 2010. "s/" Linda Marie Anne Sacks

APPENDIX E E1

Florida Statutes § 61.13

"Best Interests of Children"

The Public Policy of the State of Florida in regards to Florida Child Custody determinations, Best Interests of the Children 61.13 (2)(b)1.states:

The Court shall determine all matter relating to custody of each minor child of the parties in accordance with the best interests of the children and in accordance with the UCCJE, Uniform Child Custody Jurisdiction and Enforcement Act. It states:

1. It is the public policy of the this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage is dissolved and to encourage parents to share in the rights and responsibilities and joys of child rearing. There is no presumption for or against the father or the mother of the child or for any specific time-sharing schedule when creating or modifying the parenting plan of a child.

3. For purposes of establishing or modifying parental responsibility and creating, developing, approving or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship between each parent with regard to his or her minor child and the best interest of the child shall be the primary

consideration. Best Interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including but not limited to:

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless whether a prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(Actual Court Document has at top of page "Nov. 24, 2002" handwritten by Linda Marie Sacks)

Handwritten Letter by Bobbie Entel, Temple Beth El Sunday School (Mother of the Sunday School Teacher Robin Danow, written in capital letters and with spelling errors).

TO WHOM IT MAY CONCERN

ON SUNDAY NOV. 24, 2002 I WAS VISITING MY DAUGHTER ROBIN DANOW'S SUNDAY SCHOOL CLASS. I AM FAMILURE WITH CHILDREN WHO ARE ROBIN'S STUDENTS I HAD BEEN GOING TO TEMPLE BETH EL ON SUNDAY FOR THE LAST FEW WEEKS. I KNEW RABECCA SAKS & HER FAMILY, FROM TEMPLE SERVICES

THE CHILDREN WERE DOING AN ART PROJECT AS A GIFT FOR THEIR PARENTS ON CHANNUKAH. I OVER HEARD A CONVERSATION BETWEEN GUY SHARONE AND RABECCA SAKS. I WAS APPALLED AT WHAT I HEARD RABECCA SAY THAT I ASKED TO REPEAT WHAT SHE HAD SAID IN CASE I WAS MISTAKEN. SHE SAT BACK IN HER CHAIR SHYLY. GUY SAID RABECCA SAID 'SHE SUCKS HER DADDY'S PENIS" I ASKED ROBIN IF SHE HEARD WHAT REBECCA SAID, SHE TOLD ME SHE DID NOT. I FELT SHE SHOULD TELL SHOSHI SHARONE WHAT RABECCA SAID TO GUY (SHOSHI'S SON). SHOSHI IS NOT ONLY GUY MOTHER, SHE IS RELIGIOUS

SCHOOL DIRECTOR. I HOPED THAT THIS WAS AN ISOLATED

(Handwritten "Page 2" by Linda Marie Sacks as in the Court record")

INCEDENT AND JUST A FOOLISH CHILD SPEAKING OUT OF TURN. LATER I FOUND OUT THAT THIS HAD BEEN A PATTERN WITH REBECCA EVEN BEFORE KINDEGARDEN & THAT THE SCHOOL WAS AWARE OF IT. I HOPE NO CHILD SHOULD EVER FACE ABUSE IN ANY WAY. I SINCERELY PRAY FOR THE ENTIRE SAKS FAMILY.

BARBARA ENTEL
58 BEAVER LAKE CIRCLE
ORMOND BEACH,FL 32174

(1 386) 672-4454

(Handwritten as in the Court file "May 2005 Barbara Entel moved to N.Y. but her daughter-Robin Danow is available + lives in O. Beach, F.L. written by Linda Marie Sacks)

(Handwritten at top "March 2003 children went for 1st appt" as it is in the court record, written by Linda Marie Sacks)

324 E. Church Street 386-736-4722
Deland, Florida 32724 Fax: 386-736-4717
Diane Zeidwig, M. ED, L.M.F.T Licensed Marriage and Family Therapist Clinical Member AAMFT

CLIENTSUMMARY

I. Session History

Mr. and Mrs. David Sacks were referred to me by Ivan Fleishman, Psy.D. (clinical psychologist), for marital therapy and enhancement of the parents parenting skills. This couple came in for their first session on September 10th,1998. I saw Mr. and Mrs. Sacks for fourteen sessions from September 10th 1998 to April 6th, 1999. Mr. Sacks terminated therapy stating it was not improving their marital relationship. Mrs. Sacks was in disagreement with Mr. Sack's decision. Couple therapy terminated on April 6th, 1999 with minimal success. Mrs. Sacks came in on May 4th for an individual session.

In March, 2003, Mrs. Sacks called for an appointment for her two children Rebecca, age 8, and Samantha, age 6. Her concerns were oppositional defiance, sibling rivalry, erotized behavior, regressive behavior and possible symptoms of sexual abuse. The children were well-nourished, well-groomed, friendly, talkative and

open to play therapy with no obvious distress. I worked with the children individually and in the playroom and later occasionally joint sessions. The first session and subsequent sessions included open-ended questioning, joining playroom orientation and sand box therapy. Later sessions included art therapy, event drawing series, checkers, fantasy play, anger management, anatomical dolls and puppets.

II. Behavior Observations:

a) Erotized behavior exhibited by both children individually and in session together. These behaviors were observed in the Spring and Summer of 2003. Examples of this type of behavior included: pulling each other's pants down, touching each other's nipples, arranging Barbie Dolls in suggestive sexual positions, arranging anatomical dolls also in suggestive sexual positions.

b) Regressive Behavior by Rebecca, examples include baby talk, and thumb sucking. (Spring and Summer 2003).

c) Aggressive behavior by both children, especially Rebecca, examples include: aggression toward anatomical dolls, towards each other, aggression with puppets, dolls and toys in sand box.
(Spring, Summer and Fall 2003)

d) Art Therapy revealed: varying color intensity, large pictures filling up most of the space on the

paper often indicating feelings of inadequacy and security, are was usually well-centered indicating adjustment. Line quality was often bold, unbroken, continual and freely drawn, indicating security and intellect. Drawings of the family consistently included all members, however, other family drawings by Rebecca indicated anger towards her father, (one was sexual in nature). House-tree drawn person drawings indicated some insecurity and vulnerability by Samantha.

e) Both children appeared to ban together in their adversities and their denial of the marital strife.

f) Normal sibling rivalry.

g) Children were symptomatic of conflicting parenting styles. Recently children have "picked up" conflict of which parent was going to be present at their counseling sessions. When both parents were in the waiting room, the children sensed the martial tension and shut down verbally and emotionally in their sessions. This was not observed when just the mother was bringing the children to therapy.

h) Both children appeared to exhibit normal behavior in their school setting.

i) Despite escalating marital strife, the children appeared to be less symptomatic then in their earlier sessions of 2003

RECOMMENDATIONS:

a) Both children be evaluated by I-Care for forensic interview, to explore possible sexual abuse.

b) Physical by pediatrician for both children (mother has complied with this recommendation).

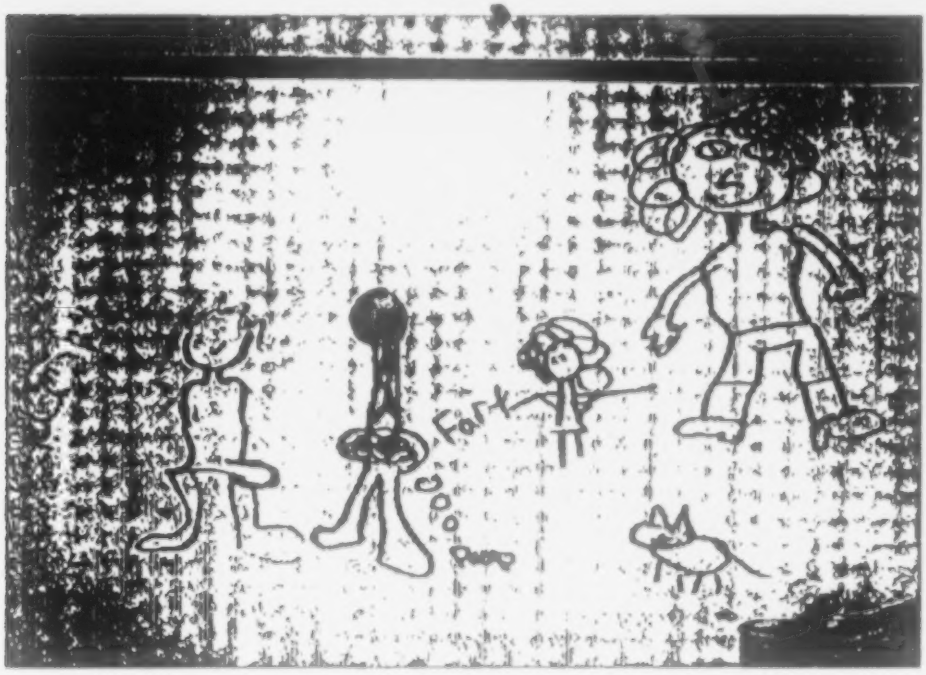
c) New play therapy for children. (I feel therapy has been contaminated by marital discord.) Children deserve a continuance of care.

d) Parenting classes for both parents.

Sincerely,

"s/" Diane Zeidwig

Drawing by R.M.S. at 8 years old in Diane Zedwig's office on 02/24/04. R.M.S drew her father, as an erect penis on legs. Diane Zeidwig never called the mandatory child abuse hotline.



BEST AVAILABLE COPY

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO: 04-30312-FMCI-30

IN RE: The Marriage of:

LINDA MARIE ANN SACKS,
Petitioner, /Wife,

and

DAVID MICHAEL SACKS and
FOOD SUPPLY, INC.,
_____/

MOTION TO EXCLUDE TESTIMONY

COMES NOW, the Respondent, DAVID MICHAEL SACKS, by and through his undersigned counsel and respectfully requests this Honorable Court exclude the testimony of Diane Zeidwig, LMFT, and as grounds therefore would show:

1. The Wife has listed Diane Zeidwig, LMFT, on her witness list dated April 30, 2004.
2. The witness, Diane Zeidwig, LMFT, has provided counseling to the parties and the parties' minor children.

3. The husband objects to Diane Zeidwig, LMFT providing testimony before the Court as the Husband asserts all information provided to Ms. Zeidig was provided in the auspices of a "therapist/patient" relationship and, as such, is confidential and should not be disclosed without the consent of all parties.

WHEREFORE, the Husband respectfully requests that this Court enter an Order excluding the testimony of Diane Zeidwig, LMFT in the instant matter.

"s/" George Burden
For Leonard Ross, Esquire
434 N. Halifax Avenue, Suite 1
Daytona Beach, Florida 32118
(386) 258-5069
Florida Bar No: 332712

CERTIFCATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been provided to the Clerk of Courts, 125 East Orange Avenue, Daytona Beach, Florida, 32114, and a true and correct copy has been provided to Garrett L. Briggs, Esquire, 121 East International Speedway Blvd. Daytona Beach, Florida 32118, and James L. Rose, Esquire, 222 Seabreeze Boulevard, Daytona Beach, Florida 32118, this 3 day of June, 2004. For Leonard Ross

"s/" George Burden

SUMMARY LETTER

Dr. Deborah O. Day of Psychological Affiliates
Court Appointed Custody Evaluator 12/04
SACKS v. SACKS
PAGE 4 OF 5

J. The Willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship with the child and the other parent.

Mrs. Sacks has the belief that Mr. Sacks is abusive. She has based this on data that exists. However, the ultimate interpretation of that data may be incorrect. If Mrs. Sacks believes that Mr. Sacks is a nonabusive parent, we suspect that she will be willing and able to facilitate and encourage a relationship between the children and their father. We have no data to suggest this may or may not occur. Mr. Sacks voices a willingness and he has the ability to facilitate and encourage a close and continuing relationship between Mrs. Sacks and the children.

k. Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to § 741.30

Does not apply.

l. *Evidence of domestic violence or child abuse.*

There is no indication of domestic violence in this case. While these people have lived together, they have been argumentative and have done so in front

of their children. However, this does not constitute domestic abuse. Child abuse has been alleged by Mrs. Sacks. A review of the available information, collateral contacts, forensic interviews of the children, and interviews of the parents have all been considered and it is the examiner's opinion that child abuse has not been perpetrated in this case. Instead, Rebecca appears to be experiencing a significant mental health crisis likely to rise to the level of a psychiatric illness. As part of her illness, she has falsely alleged behaviors. As part of the diagnosis of Pediatric Bipolar Disorder, hypersexuality and sexual acting out are common symptoms. We believe that this explanation negates child abuse. As a reminder, if these examiners believe child abuse existed, as with previous mental health professionals, a mandatory Abuse Report would have been made to the Department of Children and Families.

m. *Any other fact considered by the court to be relevant.*

It is our recommendation that this family be awarded shared parental responsibility. While a designation of primary residential responsibility may not be necessary, if the parties desire to establish a primary parent, Mrs. Sacks, due to her stronger psychological relationship with the children, would have preference. We are recommending a time-sharing situation that

reflects the need for the children's stability while having frequent access to both parents. If the parents chose to live within the same general area, and Mr. Sacks can adjust his work schedule during the week, there are several schedules that may be of benefit to the girls. The parties could consider a 2-2-3 schedule (Monday, Tuesday with one parent, Wednesday, Thursday with the second parent, and an every-other-weekend schedule) or the secondary residential parent would have the children from Thursday one week until their return to school on Monday morning with an overnight on the following week, preferably also on Thursday, and a one overnight contact Monday. These are suggestions that provide for stability rather than frequent changes and provides them with the benefits of consistent parenting while in each home.

Transcript/ Volusia Reporting Company
Daytona Beach, Florida

Oral ruling on the "Retrial of Custody of Children" by Judge Shawn L. Briese 06/26/09
p.5. line 13-25
Judge Briese saying,

"The Court also noted in that order that the wife, in case number 06-32560-FMCI, filed a petition for injunction for protection against domestic violence individually and on behalf of the children, alleging physical and sexual abuse toward a child".

An evidentiary hearing occurred on August 9, 2006. As reflected in my paragraph 29, the evidence revealed that a licensed mental health counselor found no evidence of sexual abuse by the husband. And I refer to the August 9, 2000 transcript. (The year is a typo in the transcript, it should be 2006.)
p.7 line 3-21

A report from Dr. Day indicated that the child, quote, Rebecca has a low probability of actually being abused. Rebecca's propensity to lie appears to be related to her mental health, rather abuse, quote, close quote. That's found at Transcript 51. Dr. Broom also found no sexual abuse. I noted, paragraph 30, that the wife took the children to the child advocacy center to be interviewed about the alleged abuse. That's at transcript 79. As reflected in paragraph 31, the Court found no physical abuse or sexual abuse by the husband on the children.

I do want to make one notation from the wifes deposition testimony there at was admitted at the first trial and also at this trial. There was an incident where Rebecca said, at Sunday school, quote, I suck my daddy's penis.

And that was made to another child. The continuation of that testimony that occurred in December of 02. Rebecca in December of 02, was eight years old, or almost eight years of age. She wasn't quite eight years of age. Did she say it? Yeah, I think it's reasonable that she said it. But that's not the question.

The question becomes, how does an eight year old know that particular, the medical term for that body part is a penis. That's not something that is common for eight year olds to know. They call them a lot of things, but they don't call them a penis. And that is an issue as to whether or not what Rebecca said at the time was actually in fact, true.

APPENDIX L L1

Transcript /Volusia Reporting
Reply Brief of Appellant

Conflicting Statements from Judge Briese re: R.S. having bi-polar and then saying she is perfectly fine. (She has never had bipolar or any "significant mental health crisis" as bipolar as reported by Dr. Day.)

p. 10
"Appellant, Mother to R.S. on Dr. Day's suggestion took R.S. to Dr. Broome at Halifax Behavior Services, to be further evaluated because of Dr.Days' diagnosis of R.S.'s mental health crisis of Pediatric Bipolar. In the *Domestic Injunction of Protection case 2006-32560, in the 75 pages, Appellant, Mother refers to Dr. Broome saying that R.S. is perfectly fine and not bipolar. (R.Vol. 12p.1509-1593).

***The Injunction of Protection case is included in this case before the US Supreme Court, as Appellant included it in her appeal.**

"The Mother testified that she was aware that Dr. Broome, who is a psychiatrist at Halifax Behavioral Services, said that R.S was not bipolar and was perfectly fine"

"The wife testified on cross examination that she was aware that Dr. Day—she was aware of Dr. Day's findings that Rebecca has a low probability of actually being abused and Rebecca's propensity to lie appears to be related to her mental health rather than abuse".

"The mother testified she was also aware that Dr. Broome, who is a psychiatrist at Halifax Behavioral Services, said that Rebecca was perfectly fine. That Dr. Broome said that Rebecca was not bipolar and dismissed all the sexual acting out".

Justice for Children

Reggie Williams, Dept. Head,
Florida Dept. of Children and Families
210 North Palmetto Avenue
Daytona Beach, Florida 32114.

RE: R.M.S., DOB; 11/20/94 and
S.R.S., DOB; 10/19/96

Dear Mr. Williams:

Justice for Children, JFC is a non-profit child advocacy organization with headquarters in Houston, Texas. The work of our organization has been featured on "Primetime Live" and "20/20" and Oprah" and we are a well known and respected organization by local and national media. JFC advocates and intervenes on behalf of abused children when official avenues have failed to protect them and works to ensure that they receive the protection and justice for which they are entitled. Our primary focus is ensuring the safety of children.

Our organization has been informed that the court case held to decide the matter of custody of R.M.S. and S.R.S. may have been done so without all the evidence being presented to the court and therefore may have resulted in a verdict contrary to the best interests of the aforementioned children.

On April 3, 2007 Case 2004-30312 was decided in favor of the respondent David Michael Sacks and giving Supervised Visitation to the petitioner Linda

Marie Sacks. We have reviewed information regarding allegations of sexual and physical abuse of the children by the father. We are concerned that the evidence collected was never properly investigated by your agency. We have concerns about the following information:

1. The evaluation of Diane Zeidwig, LMFT, the Sacks children's therapist from March 2003 to July 2005. According to her client summary, Ms. Zeidwig observed the following: Eroticized behavior exhibited by both children individually and in sessions together". Aggressive behavior by children, especially R.S. and "Family drawings by R.S. often indicate anger to her father, (one was sexual in nature)".

2. Deborah O. Day, Psy.D. recently submitted a second evaluation to the court for consideration in March 2007. In a report previously done in December 2004, Dr. Day gave her recommendation regarding which parent should obtain primary residential responsibility. She stated the following: Mrs. Sacks, due to her stronger psychological relationship with the children, would have the preference".

As stated above, our objective is not to ensure custody for either parent. We are advocating for R. and S. to be placed in an environment that is nurturing and free from emotional, sexual and physical abuse. While we are only reviewed evidence from one side, the information we have reviewed raises many concerns for the children's safety.

There have also been allegations that Mrs. Sacks has alienated these children from their father, a symptom of "PAS" or "Parental Alienation Syndrome". We believe that PAS is merely a theory, not a recognized psychiatric condition, and is literally "junk science". The use of PAS in child abuses cases places children at risk for further harm, as it discourages through investigations of the allegations. JFC has done extensive research on PAS, which we have available on our website, www.justiceforchildren.org.

We thank you for your time and consideration in this matter. We look forward to hearing from you regarding your opinion on how this case was handled, and working with us towards a positive outcome for the Sacks children.

Sincerely,
Angela Felder
Director of Casework

APPENDIX N N1

Linda Marie Sacks News Interview

Capital News 9.com

Rss Twitter Cap
Your news now

Updated 01/11/2009 05:21 PM

Battered Mothers Custody Conference
By Dave Detlling

Albany, N.Y.- "My daughter's said Mommy fight for me, fight for us every day and do so something to get us back," said Linda Marie Sacks.

The Florida mother said the source of her pain is losing her two daughters.

"In less than one year and nine months I've had less than 37 hours of contact" she said.

A victim of domestic violence, Sacks lost her children to what she calls an unfair custody battle.

Dr. Mo Hannah, a professor of psychology at Siena College, said it's often the outcome in many relationships where battering takes place.

"In the course of these battles women run out of money because normally the men have more money, and the women become debilitated by the stress of trying to fight for their children," said Dr. Hannah.

Hannah said a lack of money and an unfair judicial system .can make it more difficult for mothers like Sacks to gain proper custody. This is also true for fathers.

It's a wide spread problem and it's drawn more than 200 people and outside organizations to the Sixth Battered Mother's Custody Conference in Albany. They've come from as far as Spain and South Africa in hopes of finding support.

"They need to talk to other women. They need to talk to legal advocates, they need to talk to domestic violence advocates, and they need to get connected as other people at the conference have gotten connected so they can have support", said Dr. Hannah.

And for parents like Linda Marie Sacks, it's this type of network they say will bring them closer to their children.

"There is no quick remedy for moms like me but I will not stop trying to get my daughters back," said Sacks.

Experts say custody battles like these often stem from unbalanced court proceedings. They say the best defense is through documentation and getting help from advocates.

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